VIRGINIA LAW REGISTER.

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AT the December session of the Virginia legislature, Senator Bryant, of Henrico county, introduced a bill to amend and re-enact sections 3567, 3570, and 3576, and to repeal section 3568 of the Code of Virginia, in relation to the lien of a judgment.

The proposed amendments have reference only to the "relating back to the first day of the term" feature of the present law, the dangers of which to all purchasers and mortgagees of real estate in Virginia, are obvious. They are specifically set forth in *Building Association* v. *Reed*, 96 Va. 345, in which the Court of Appeals simply enforces the present legislation in a manner which must attract the attention of all business men as well as lawyers. Argument in favor of the bill was heard with attention by the Senate Committee on Courts of Justice, the membership of which is such as to give every reason to expect its prompt approval of the measure. As soon as the legislature reconvenes in February, the bill will be taken up and pressed to a hearing. It contains a saving clause as to rights which have vested under the present law.

PRESIDENT ROOSEVELT has recently nominated Henry Clay McDowell, Esq., of Wise county, Virginia, for the vacant judgeship of the United States District Court for the Western District of Virginia, caused by the death of Judge John Paul. Judge McDowell has already qualified and entered upon the discharge of his duties. From what we know and hear of Judge McDowell's judicial qualifications, we are assured that his selection will prove entirely satisfactory to the bar of his district. He is still in his early forties, is a learned lawyer, and is said to be ambitious, industrious, and to possess a strong judicial temperament. He comes from distinguished "law stock" on both sides, and will doubtless find one of his strongest incentives in a desire to show that in the quieter atmosphere of the court room and of chambers, he is a worthy descendant of the great lawyer and expositor of the Constitution whose name he bears.

SPEAKING of young judges, we note another appointment by President Roosevelt—that of Hon. Francis E. Baker to the vacancy of the Federal bench in the Seventh circuit, including in its jurisdiction the States of Indiana, Illinois and Wisconsin. Judge Baker has only recently passed his forty-first birthday. He belonged at one time to a law firm which has had in one respect a remarkable record. One member, his father, was made United States District Judge for the District of Indiana; another, his uncle, Hon. Joseph A. S. Mitchell, became a member of the Supreme Court of Indiana, while he himself, in 1899, was appointed a justice of the same court.

By the way, the President has made a statement as to his plans and purposes that all lawyers must endorse—that his appointments to the bench will be governed by merit and record only, and that as to these, at least, the politicians must keep "hands off."

AN interesting illustration by a great tribunal of the desire of the courts nowadays to do substantial justice, and strictly to construe technical contentions, is afforded in the case of *High* v. *Coyne*, 178 U. S. 111.

In the case of *Knowlton* v. *Moore*, page 41 of the same volume, a construction by the United States Collector of Internal Revenue of that portion of the War Revenue Act of June 13, 1898, relating to the taxes on legacies and distributive shares of estates of deceased persons (sections 29 and 30), was appealed from by representatives of the decedent, both because of the alleged unconstitutionality of the Act, as so construed, and especially because such construction imposed the duty on the particular legacies or distributive shares, and not upon the whole estate—thus greatly increasing the amount of the tax.

The opinion of Mr. Justice White is a most learned and exhaustive discussion of the general subject of death-duties, in which are reviewed the laws of France, Germany and England on the same subject. He concludes with a judgment reversing the court below, which upheld the decision of the collector, and gives his reasons *in extenso*, the opinion covering some seventy pages.

The next cases reported are those of *High* v. *Coyne* and *Fidelity etc. Co.* v. *McClain*, in which the same sections of the act of 1898 were attacked, *but upon the ground of unconstitutionality alone.* In neither case was there anything in the record to show the court that "the statute was, by the collector, mistakingly *construed.*" Nevertheless, the judgment of the lower court was affirmed as to the consti-

tutionality of the statute, but without prejudice to claim the construction of the law as just laid down in *Knowlton* v. *Moore*. Said Mr. Justice White in the last named case:

"In *Knowlton* v. *Moore* . . . . it was held that the law in question was constitutional. As, however, the interpretation of the statute, which was held to be unsound . . . was the one which was adopted and enforced by the officers charged with the administration of the law, the impression naturally arises that such erroneous construction may have been applied in assessing the tax in controversy. The ends of justice, therefore, require that the right to relief as to so much of the tax, if any, as may have arisen from the wrong interpretation of the statute above referred to, be not foreclosed in our judgment."

This is, in our opinion, an excellent precedent and starting point for all courts who desire to do justice according to the very right of the case. Too often has a suitor with a meritorious cause been denied relief because his counsel mistook the theory of his case, or did not mention in pleadings or argument what later appeared to be an essential element in it. But in the cases referred to, the Supreme Court says in substance: "The eminent counsel for appellants have not even raised in their pleadings or briefs the point upon which the decision will go off. We cannot, however, when three cases are before us in which substantially the same rights are involved, adjudge life to one and death to two, but shall so frame our order as to grant the same relief to all."

The topic is a most suggestive one.

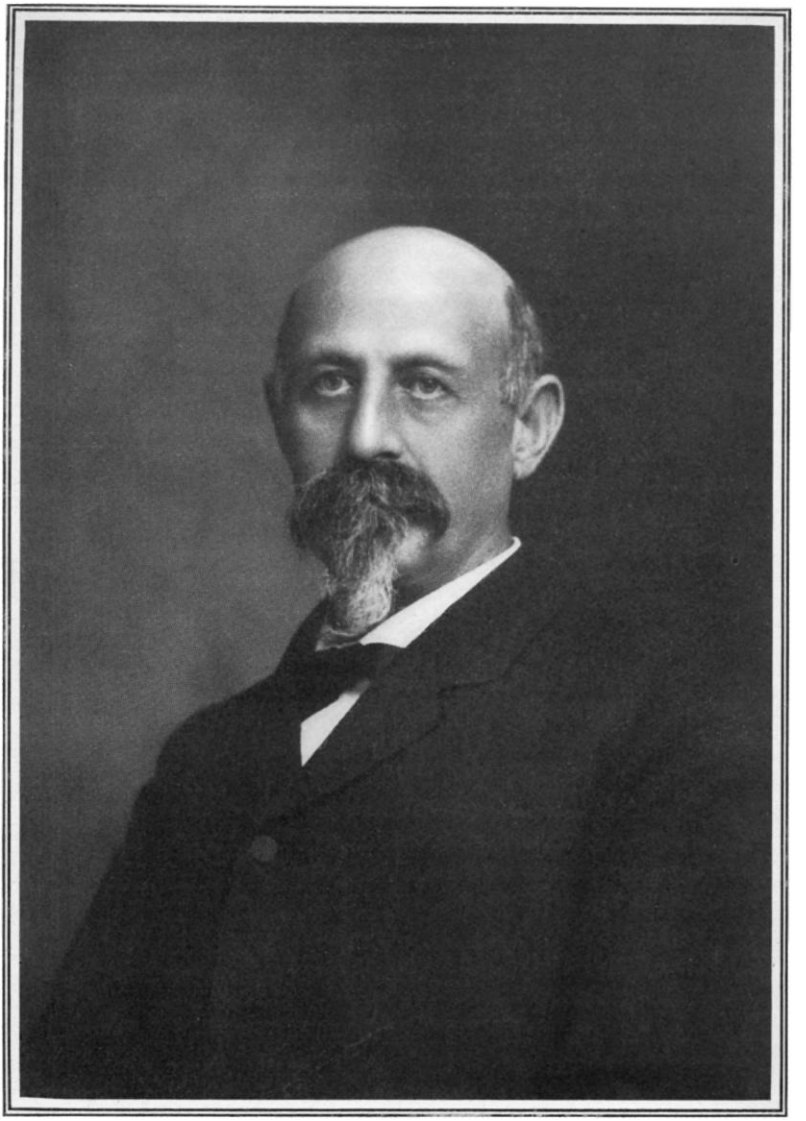
THE Court of Appeals of Maryland has denied admission to its bar to female practitioners. In an opinion delivered November 21, 1901, *In Re Etta H. Mattox*, it was unanimously held that under the present statutes of Maryland a woman is not entitled to admission. The essence of the opinion is that by the common law and by the usages of Westminster Hall from time immemorial, women were excluded from practising as attorneys, and that there has been in Maryland no sufficient legislation to abrogate the common law. The case is reported in 34 *Chicago Legal News*, page 139, the founder and editor of which journal for twenty-five years was Mrs. Myra Bradwell. The point was made on behalf of Miss Maddox, and in our judgment with considerable force, that while it is provided by the Maryland Act of 1898 that "all applications for admission to the bar shall be referred by the Court of Appeals to the State Board of Law Examiners, who shall examine the applicant touching *his* qualifications," nevertheless that

by Article I, section 6 of the Code of Maryland, prescribing the rules for the interpretation of statutes, it is provided that "the masculine includes *all* genders, except where such construction would be absurd or unreasonable."

While we have no desire whatever to see women admitted to the bar, we must say that the opinion of the court, as a mere question of statutory construction, falls far short of demonstrating the correctness of the ruling. It indulges in some skillful judicial fencing as to what the law was *before* the Act of 1898, but that was not the question before the court. The fact was, that before the passage of that act, the statute expressly contained the word "male"; and many a man, following a familiar rule of construction, would confidently argue that when the legislature struck out that word and yet left the rule of interpretation above mentioned still standing in the first article of its Code, it made a strong case for the ladies. The entire opinion reads as if the court were saying *sotto voce*, "We don't want you at our bar, and we shall not allow you to practise until the legislature says that we must." Had the case gone the other way, the most probable comment would have been, "Of course—a necessary consequence from the two statutes." Or, had the case been one of direct property rights, real or personal, we cannot doubt that the same court would have said, "The masculine includes all genders."

At the same time, we repeat, we do not regret the result of the decision. The atmosphere of a court room, especially at *nisi prius*, is not healthful for womankind.

OUR series of portraits of the Judges of the Virginia Court of Appeals becomes complete with this number, with which is presented the portrait of Judge John A. Buchanan.



HON. JOHN A. BUCHANAN,

Judge of the Supreme Court of Appeals of Virginia.